

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION**

GILBERT CABLE,

Plaintiff,

v.

EVANSTON INSURANCE COMPANY, the
successor by merger to ESSEX
INSURANCE COMPANY,

Defendant.

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Civil Action No. 4:16-cv-01136

DEFENDANT EVANSTON INSURANCE COMPANY'S NOTICE OF REMOVAL

COMES NOW, Defendant Evanston Insurance Company, successor by merger to Essex Insurance Company ("Evanston"), and hereby exercises its rights under 28 U.S.C. §§ 1332, 1441, and 1446 to remove this action from the District Court of Tarrant County, Texas, in which this action is now pending as Cause No. 236-288963-16. In support hereof, Evanston shows the Court as follows:

1. This is an action of a civil nature over which the District Courts of the United States of America have original jurisdiction pursuant to 28 U.S.C. § 1332 because complete diversity of citizenship existed at the time of the filing of this action and still exists as between Plaintiff and Defendant, and the amount in controversy exceeds the sum of \$75,000, exclusive of any interest and costs.

2. Under 28 U.S.C. §§ 1441 and 1446, Evanston has the right to remove this action from the District Court of Tarrant County, Texas, to the United States District Court for the Northern District of Texas, Fort Worth Division, which is the federal district and division in which the action is pending.

3. Plaintiff Gilbert Cable is an individual residing in the State of Texas and, as alleged in Plaintiff's Original Petition, resides and owns property in Fort Worth, Texas.

4. Evanston is an Illinois corporation with its principal place of business in the state of Illinois.

5. Plaintiff asserts claims against Evanston for the alleged breach of an insurance contract, the alleged violation of the Texas Prompt Payment of Claims Act, alleged bad faith, and the alleged violation of the Texas Deceptive Trade Practices Act. Plaintiff seeks to recover damages in excess of \$200,000, as well as statutory penalties, punitive damages and attorneys' fees and costs.

6. Evanston denies any and all alleged wrongdoing and any and all liability to Plaintiff. Evanston has not yet filed a responsive pleading in the state court action. By filing this Notice of Removal, Evanston does not waive any defenses that may be available to it. Evanston will file a responsive pleading within the time set forth in Rule 81(c) of the Federal Rules of Civil Procedure.

7. Evanston was served with the Petition and Citation through the Texas Department of Insurance on November 20, 2016. This Notice of Removal is being timely filed within thirty (30) days of service of the Petition and Citation on Evanston pursuant to 28 U.S.C. § 1446(b).

8. Service of this Notice of Removal is being made on all parties as shown by the attached Certificate of Service as required by 28 U.S.C. § 1446(d).

9. In accordance with the requirements of Local Rule 81.1(a)(4)(A), Evanston is attaching as **Exhibit A** hereto an Index of all documents filed in the state court action.

10. In accordance with Local Rule 81.1(a)(4)(B), Evanston is attaching as **Exhibit B** hereto a copy of the docket sheet for state court action.

11. In accordance with the requirements of 28 U.S.C. § 1446(a) and Local Rule 81.1(a)(4)(C), Evanston is attaching as **Exhibit C-1** hereto a copy of the Petition and Citation previously filed and/or issued in the state court action on November 16, 2016, and which was served on Evanston on November 20, 2016. Evanston is attaching as **Exhibit C-2** hereto a

copy of the Citation returned executed, which was filed in the state court action on November 23, 2016. No further process, pleadings, or orders have been filed or issued in the state court action.

12. In accordance with the requirements of Local Rule 81.1(a)(4)(D), attached hereto as **Exhibit D** is a separately signed certificate of interested persons that complies with Local Rule 3.1(c).

13. Promptly after filing this Notice of Removal, and as required by 28 U.S.C. § 1446(d), Evanston will serve on Plaintiff and file with the District Clerk of the District Court of Tarrant County, Texas, a "Notice of Filing of Notice of Removal" in the form attached hereto as **Exhibit E** that will include a copy of this Notice of Removal as an exhibit thereto.

WHEREFORE, Evanston respectfully prays that this action be removed to this Court for further proceedings as though this action had originally been instituted in this Court.

Respectfully submitted:

/s/ Anthony DiPietra

Alicia G. Curran
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ATTORNEYS FOR DEFENDANT EVANSTON
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CERTIFICATE OF SERVICE

This is to certify that a true and correct copy of the above document has been served on all counsel of record via email and regular U.S. Mail, on this the 12th day of December, 2016.

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Attorneys for Plaintiff Gilbert Cable

/s/ Anthony DiPietra

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